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4 UNITED STATES OF AMERICA
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 H. FREDERICK PETERSON, as owner of the
8 marine vessel LOFOTEN SPIRIT,

9 Plaintiff,

10 v.

11 JAMES R. ALLEN, JOHN A. AYDELOTTE, and
12 LISA M. AYDELOTTE, as individuals, and JOHN
13 M. AYDELOTTE as owner, d/b/a MARINE
SERVICES & ASSIST BOATYARD, a
Washington sole proprietorship,

14 Defendants.
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Case No. C07-1866MJP

ORDER DENYING MOTION
TO STAY AND COMPEL
ARBITRATION

16 This matter comes before the Court on Defendants' motion to stay and compel arbitration.
17 (Dkt. No. 17.) Having considered the motion, Plaintiff's response (Dkt. No. 18), Defendants'
18 reply (Dkt. No. 20), and all papers submitted in support thereof, the Court DENIES the motion to
19 stay and compel arbitration.

20 **Background**

21 Plaintiff Peterson was not onboard when his yacht ("Casualty") grounded on rocks. Three
22 men, Troy Schlaitzer, Paul Benedict, and Don Ostheller were onboard and called for help.
23 Defendants who are employees of Marine Services & Assist Boatyard, a marine salvage and
24 towing company, responded and freed the Casualty. Before attempting a rescue, Defendants
25 presented Mr. Schlaitzer, the master of the yacht, with a No-Cure No-Pay Salvage Contract
26 ("Salvage Contract"). Mr. Schlaitzer contested the payment terms of the contract and refused to
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1 sign it. However, Mr. Benedict did sign the contract, and the rescue was performed.

2 Plaintiff's complaint challenges the formation of the Salvage Contract on the ground that
3 Mr. Benedict had no authority to bind Plaintiff Peterson to the agreement. (Compl. at ¶ 16.)
4 Plaintiff also challenges the validity of the contract on the grounds that it was signed under duress
5 and is unconscionable. Id. Defendants ask the Court to refer this dispute to arbitration because
6 the Salvage Contract contains an arbitration provision. (Defs.' Mot. at 5.)

7 Discussion

8 When parties have agreed to arbitrate a dispute concerning a maritime transaction, the
9 Court must refer the dispute to arbitration. See 9 U.S.C. 1-4 (1988). However, Plaintiff's
10 complaint alleges that no such agreement was ever reached. While Defendants cite a line of cases
11 holding that contract disputes must be referred to arbitration unless the validity of the arbitration
12 clause itself is challenged, see Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404
13 (1967); see also Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 448 (2006), those
14 cases do not apply when Plaintiff alleges that no contract was ever formed. Three Valleys Mun.
15 Water Dist. v. E.F. Hutton & Co., Inc., 925 F.2d 1136, 1140-41 (9th Cir. 1991); see Republic of
16 Nicar. v. Standard Fruit Co., 937 F.2d 469, 477 (9th Cir. 1991).

17 The Ninth Circuit has provided that before a party can be ordered to arbitrate, there
18 should be an "express, unequivocal agreement to the effect." Three Valleys, 925 F.2d at 1141
19 (quoting Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., 636 F.2d 51, 54 (3d Cir. 1980)).
20 Because Plaintiff challenges the formation of the contract, he necessarily challenges any
21 agreement to arbitrate. See Three Valleys, 925 F.2d at 1142. While an arbitrator may determine
22 whether a contract is voidable (e.g. because of duress or unconscionability), the Court must
23 determine whether the contract itself is void ab initio (e.g. if the person who signed the contract
24 lacked signatory power). See Three Valleys, 925 F.2d at 1140-41.

25 The parties dispute whether Mr. Benedict had authority to bind Plaintiff to the Salvage
26 Contract. "[T]he issue of agency is essentially a legal one and must be decided by the court."

1 Republic of Nicar., 937 F.2d at 477, (citing Three Valleys, 925 F.2d at 1140-41). In addition to
2 his formation claim, Mr. Peterson challenges the validity of the contract alleging that it was signed
3 under duress and is unconscionable. (Compl. at ¶ 16.) If the Court determines that a binding
4 contract was formed, these issues should be resolved in arbitration. See Three Valleys, 925 F.2d
5 at 1140.

6 **Conclusion**

7 The arbitration clause in the disputed contract cannot be enforced until the Court has
8 determined the threshold issue of contract formation. Defendants' motion to stay and compel
9 arbitration is denied.

10 The clerk is directed to send copies of this order to all counsel of record.

11 Filed this 23rd day of July, 2008.

12 s/ Marsha J. Pechman
13 Marsha J. Pechman
14 United States District Judge
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